

161.9 Payment of claims.

1. The board shall approve a claim against the fund to pay for remediation of a contaminated site if all of the following apply:

a. The claim is made in a manner and according to procedures contained in a remediation agreement executed by the board and the eligible person and rules adopted by the board.

b. The person who has executed a remediation agreement with the board and is filing the claim is a responsible person eligible under section 161.8.

c. The claim includes all of the following:

(1) Evidence of the contamination, including affidavits of experts, photographs, or documentation by federal or state agencies including the department of natural resources.

(2) The total amount required to pay for all costs related to remediating the site as performed by a qualified person according to a business invoice. The business invoice shall be accompanied by supporting evidence.

(3) Information about any insurance policy required to indemnify the responsible person for costs associated with remediating the contaminated site, including a copy of the policy.

(4) The site has been remediated according to a plan of remediation approved by the department as provided in section 161.8.

(5) The claim is complete and accurate, and contains no false or misleading statements.

(6) The approval by the department, in consultation with the board, of a comprehensive plan by the responsible person for the prevention of future contamination at the site.

2. If the board approves a claim, the board shall reimburse the responsible person by doing any of the following:

a. Providing for the immediate payment of a claim, if the board determines that the contamination causes a clear, present, and impending danger to the public health or the natural environment.

b. Providing for the ordinary payment of a claim as follows:

(1) The board may pay the amount of the claim based on a final statement submitted by a responsible person. The department, in consultation with the board, may establish guidelines for reasonable and necessary charges for specific remediation procedures. Payment shall not exceed these reasonable and necessary charges without prior approval of the board.

(2) Upon a determination that the claim is eligible for payment, the department shall provide for payment of the claim as provided in this subsection.

c. Withholding a portion of the payment as provided in the remediation agreement, for final payment when the department determines that the site has been monitored for a period necessary to ensure that remediation has been successful.

d. The amount of the claim shall be the total amount required to remediate the site subject to all of the following:

(1) A deduction of five thousand dollars.

(2) A deduction in the amount of the insurance payments owed to or received by the responsible person for indemnification of remediation costs. The amount of the insurance payments shall be applied first to satisfy the five thousand dollar deduction required in subparagraph (1).

(3) After making the deductions required in subparagraphs (1) and (2), the department shall provide for payment in the amount of ninety percent of claims up to one hundred thousand dollars, eighty percent of claims over one hundred thousand dollars, but not exceeding two hundred thousand dollars, and seventy percent of claims over two hundred thousand dollars up to two hundred fifty thousand dollars.

(4) The amount of a claim shall not be more than two hundred fifty thousand dollars to pay the costs of remediating a contaminated site.

3. The board shall not provide payments from the fund until the board determines that the claim is reasonable and that the claimant has submitted all evidence necessary in order to support the claim and any expenditure of moneys from the fund. The board shall place conditions or requirements upon the payment of moneys from the fund in order to ensure that the moneys are used to provide remediation in compliance with a remediation plan required pursuant to section 161.8.

4. If at any time the department determines that there are insufficient moneys in the fund

to make payment of all claims, the department shall pay claims according to the date that the claims are received by the department. To the extent that a claim cannot be fully satisfied, the department shall order that the unpaid portion of the payment be deferred until the claim can be satisfied. However, the department shall not satisfy claims from moneys dedicated for the administration of the fund.

5. The department shall have a claim on behalf of the fund against any responsible person who files a claim in violation of this chapter for the amount paid for remediation. The responsible person shall be liable for damages. The moneys collected by the department under this subsection shall be deposited into the fund.

2000 Acts, ch 1184, §9